

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.845 OF 1998
IN
WRIT PETITION NO.321 OF 1998

Airports Authority of India
(International Airports Division)
Mumbai Airport,
Bombay - 400 099 .. Appellant.

V/s.

1. Mr.G.K. Pande
C/o. K.K. Pande,
201, Hema Apartment,
'A' Wing, Damle Nagar,
Pada No.3, Thane - 6.
2. Mr.S.B. Panse, Presiding
Officer, Central Government
Industrial Tribunal No.2,
having his office at
Shramraksha Bhavan, Shiva-
srishti Road, Sion,
(Chunabhatti), Bobay 400 092 .. Respondent.

Mr.S.S. Patil for the appellant.

Respondent No.1 present in person.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 12TH OCTOBER, 2004.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

We heard Mr.S.S. Patil, the learned
counsel for the appellant.

2. The first respondent was appointed as an
Operator (hereinafter referred to as 'the workman')

with the appellant w.e.f. March 15, 1982. The workman remained absent without any prior permission w.e.f. January 12, 1988. The appellant acted under Regulation 31(2)(vi) of the International Airports Authority of India (General Conditions of Service) Regulations, 1980 (Regulations, 1980) and terminated the workman's service by memorandum dated April 29, 1988. The workman raised industrial dispute in respect of his termination. By part I Award dated April 27, 1995, the Central Government Industrial Tribunal No.2 held that the workman ought to have been given opportunity and having not done that the termination of the workman was improper. The employer (appellant herein) was given opportunity to justify the same. The said order came to be challenged by the employer in writ petition. The learned single Judge dismissed the writ petition in limine by his order dated March 10, 1998. Aggrieved thereby the employer has come in appeal.

3. The learned single Judge has relied upon the division bench judgment of this Court in the case of International Airport Authority of India V/s. Viru Muthu Sukhlingam & Another [1993 II CLR 521] wherein it was held that for want of approval of Regulations, 1980 by the Central Government, the said

Regulations cannot be relied for the purpose of justifying the termination without notice. The learned counsel canvassed before us that the division bench judgment of this court is per incurium and, therefore, was not binding on the learned single Judge. In any case, the learned counsel submitted that the division bench judgment of this court in the case of Viru Muthu Sukhlingam does not lay down the correct law. The learned counsel relied upon Section 10(1) of the International Airports Authority Act, 1971 and submitted that the Regulations may be treated as instructions or guidelines pending approval of the Central Government. He also relied upon the judgment of the Supreme Court in the case of T. Cajee V/s. U. Jormanik Siem [AIR 1961 SC 276] and International Airports Authority of India Engineers' Association V/s. International Airports Authority of India [2002 I CLR 149].

4. We are not persuaded by the submissions of the learned counsel for the appellant. Admittedly, the appellant has not framed any administrative instructions or guidelines pending approval of the Regulations framed under Section 37 by the Central Government. Regulations, 1980 framed under Section 36(2)(c) having not been accorded approval by the

Central Government cannot be said to have come into effect. The division bench of this court in the case of Viru Muthu Sukhlingam held thus :

"The Tribunal and the learned Single Judge have both dealt with this aspect in detail and there is really nothing we can usefully add.

The reliance placed upon Regulation 31(2)(vi) in support of the submission that it was not necessary to hold an enquiry before ordering termination is not justified. Section 37 of the International Airport Authority Act, 1971 empowers the appellants to make regulations not inconsistent with the Act and the Rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the said Act. Without prejudice to the generality of the powers accordingly conferred, such regulations may provide for the conditions of service and the remuneration of officers and other employees appointed by the appellants. Section 38 enacts as follows :-

'(1) Any regulation which may be made by the Authority under this Act may be made by the Central Government by notification in the Official Gazette within one year of the constitution of the Authority and any regulation so made may be altered or rescinded by the Authority by means of a regulation made by it under this Act.

(2) No regulation made by the Authority under this Act shall have effect until it has been approved by the Central Government and published in the Official Gazette.'

It will be seen that the power to make regulations is subject to certain conditions. One of the conditions is that no regulation made by the Authority under the Act shall have effect until it has been approved by the Central Government and published in the Official Gazette. It is not in dispute that the regulations in question have not received the approval of the Central Government and, consequently, there is no publication in the Official Gazette. The regulations have been submitted to the Central Government for their approval and are pending consideration with them. Under these circumstances, in our opinion, the regulations have no effect in the eye of law. They or any of them cannot be relied upon for the purpose of justifying the termination without notice. We agree with the reasoning and conclusion of the Tribunal and the learned Single Judge on this point and reject the submission."

5. We find ourselves in agreement with the view of the division bench judgment of this court in Viru Muthu Sukhlingam. The judgment cited by the learned counsel has no application. As already indicated above, no power has been exercised by the appellant in framing the administrative instructions under Section 10(1) of the Act of 1971.

6. The appeal has no merits and is dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)